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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/661,971	09/14/2000	Gautam Bhaskar	CV0293	8921

7590 01/15/2003

BRISTOL-MYERS SQUIBB COMPANY
100 HEADQUARTERS PARK DRIVE
SKILLMAN, NJ 08558

EXAMINER

MENON, KRISHNAN S

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 01/15/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/661,971

Applicant(s)

BHASKAR ET AL. *fi 8*

Examiner

Krishnan S Menon

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1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 18 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 10-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-9 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-9 and 16-18 are pending in this application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a), are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1-9 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/30304 in view of Lynam (US 5,073,012).

WO (304) discloses an apparatus (instant claim 1-9) and a method (instant claim 16-18) of centrifuging blood or plasma using this apparatus. The apparatus comprises container (10-fig 1) for holding blood, a turn-table for rotating the container (instant claim 1,4) (1-fig1), a halogen lamp (26-fig 1) and an IR heat source (27-fig 1) (instant claim 1,5,6,7,8), temperatures sensors (31,32-fig1) and control units (28-fig 1) (instant claim 9), the container having a piston and a cylinder, and the piston dividing the cylinder into upper and lower chambers (instant claim 2), and piston activation means

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for moving piston (instant claim 3) (page 6). WO(304) also discloses use of polycarbonate for the wall of the centrifuge container (lies 15-24, page 4) for transmitting only visible light and optimizing energy release from the light emitting source.

WO (304) does not disclose an additional UV filter other than the polycarbonate wall of the centrifuge to filter the UV part of the light emitted by the halogen lamp. Lynam (012) teaches that polycarbonate absorbs UV light below 400 nm (col 8 line 52-col 9 line 11) and the use of UV blockers, filters or screens for protection against UV (col 10: 8-35). It would be obvious to one of ordinary skill in the art at the time of invention to provide a UV filter as taught by Lynam (012) to the halogen lamp as taught by WO(304) to remove the harmful UV light and transmit only visible light for heating the sample which is an alternate but equivalent means of providing light for heating as taught by WO(304) for equivalent function.

2. Claims 1-9 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/30304 in view of Wollowitz et al (US5,593,823).

WO (304) discloses an apparatus (instant claim 1-9) for centrifuging blood or plasma. The apparatus comprises container (10-fig 1) for holding blood, a turn-table for rotating the container (instant claim 1,4) (1-fig1), a halogen lamp (26-fig 1) and an IR heat source (27-fig 1) (instant claim 1,5,6,7,8), temperatures sensors (31,32-fig1) and control units (28-fig 1) (instant claim 9), the container having a piston and a cylinder, and the piston dividing the cylinder into upper and lower chambers (instant claim 2), and piston activation means for moving piston (instant claim 3) (page 6). WO(304) also discloses use of polycarbonate for the wall of the centrifuge container (lies 15-24, page 4) for transmitting only visible light and optimizing energy release from the light-emitting source.

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WO (304) also teaches a method of centrifuging blood or plasma using this apparatus as in instant claims 16-18.

WO (304) does not teach having a filter placed between the wall of the container and the light-emitting source for filtering substantially radiation in the range of 190-400 nm. Wollowitz (823) teaches the use of such filters to remove radiations of specific wavelengths between a blood containing means and a heat source (see fig 6 and col 26 lines 9-16). It would be obvious to one of ordinary skill in the art at the time of invention that a filter could be placed between the wall of the container and the heat source to make sure that any unwanted radiation wavelengths are filtered from the heat-emitting source as taught by Wollowitz (823) and the radiation hitting the blood sample could be tailored to certain specific wavelengths.

Response to Arguments

Applicant's arguments filed on 11/18/02 have been fully considered but they are not persuasive.

Applicant argues that WO '304 does not teach or suggest the use of a filter disposed between the heat emanating unit and the container to filter the radiation emitted from the heat-emitting device to remove substantially all the wavelength between 190 and 400 nm. This may be true for claim 1. However, the WO '304 reference specifically states that the vessel wall of WO '304 is polycarbonate, chosen to transmit visible light (lines 15-24, page 4). Polycarbonate is well known as a UV absorbing material, as is given by the secondary reference Lynam. Claim 16 only recites 'filtering substantially all radiation from 400-190 nm from the heat-emitting device', which is provided by the polycarbonate wall of WO'304. Applicant further argues that there is no suggestion to combine the Lynam reference with WO '304. Examiner has used the Lynam reference only to

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show that polycarbonate absorbs radiation below 400 nm, since primary reference is silent on the UV region of the radiation. The applicant does not deny that the polycarbonate wall functions as a UV filter. Applicant's argument that a *prima facie* obviousness is not established because of the "improved results" with the extra UV filter between the wall and the light source would only amount to showing that the UV filter provided by WO '304 is not sufficient to filter the UV radiation completely.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S Menon whose telephone number is 703-305-5999. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Krishnan S. Menon
Patent Examiner
January 8, 2003


W. L. WALKER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1710